

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ESTATE OF HARRY SMITH, III, HARRY)	
SMITH, JR., AND ROSLYN WOODARD)	
SMITH,)	
)	
Plaintiffs,)	
)	Case No. 04-1254
v.)	
)	
WILMINGTON POLICE DEPARTMENT,)	
MICHAEL SZCZERBA, and ONE OR)	
MORE JOHN DOES,)	
)	
Defendants.)	

**STIPULATION AND ORDER CONCERNING THE
AMENDED COMPLAINT, CAPTION AND BRIEFING**

WHEREAS, the plaintiffs having sought leave to amend their Complaint, and

WHEREAS, the defendants having consented to leave to amend the Complaint, and

WHEREAS, the parties and the Court discussed defendants' proposed motion under Rule 12(b)(6) at a conference on September 22, 2005;

It is hereby STIPULATED that:

1. Leave to amend the Complaint is GRANTED.
2. Defendants shall answer the Amended Complaint on or before October 12, 2005.
3. All claims raised and all parties named in the original Complaint, and the miscellaneous action *Smith v. Mosley*, Case No. 04-MC-76, and not raised in the Amended Complaint, are withdrawn and/or dismissed.
4. Henceforth, the caption of this case shall be as follows:

HARRY SMITH, JR., and ROSLYN)	
WOODARD SMITH, individually and as)	
Administrators of the ESTATE OF HARRY)	
SMITH, III)	
)	
Plaintiffs,)	Case No. 04-1254
)	
v.)	
)	
CITY OF WILMINGTON, JOHN)	
CIRITELLA, THOMAS DEMPSEY and)	
MATTHEW KURTEN,)	
)	
Defendants.)	

5. The claims alleging violation of the Eighth Amendment to the United States Constitution are dismissed with prejudice.

6. Defendants will file a motion to dismiss the claims of the estate and the individual plaintiffs under the Fourteenth Amendment to the United States Constitution. The parties shall file letter memoranda in accordance with the following schedule:

- | | | |
|----|---|--------------------|
| a. | Defendants' Opening
(5 pages, double spaced) | September 30, 2005 |
| b. | Plaintiffs' Answering
(5 pages, double spaced) | October 7, 2005 |
| c. | Defendants' Reply
(3 pages, double spaced) | October 12, 2005 |

/s/Anne T. Sulton

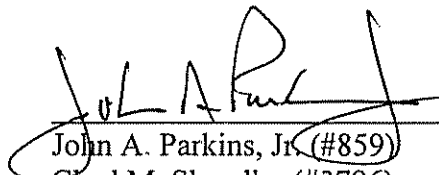
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SO ORDER this _____ day of _____, 2005

District Court Judge